

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

FERMIN CORTEZ, et al.,	)	
	)	
Plaintiffs,	)	8:08CV90
	)	
and	)	
	)	
DAVID CHUOL, et al.,	)	
	)	
Plaintiffs,	)	8:08CV99
	)	
vs.	)	
	)	
NEBRASKA BEEF, LTD. and	)	ORDER
NEBRASKA BEEF, INC.,	)	
	)	
Defendants.	)	

This matter is before the court on the plaintiffs' Unopposed Motion Regarding Postcard Notice to the Class Regarding the Trial Date; Opposed Motion that Cost of Mailing the Postcard Notice be Paid by Defendant ([Filing No. 278](#)). The plaintiffs filed an index of evidence ([Filing No. 279](#)) in support of the motion. The defendants filed a brief ([Filing No. 280](#)). The plaintiffs filed a brief ([Filing No. 281](#)) in reply.

The parties have agreed on the form of a postcard for notice to the certified classes about the change in trial date. However, the parties disagree about which party should bear the cost of sending out the notice. The plaintiffs argue the defendants should pay the estimated \$2,750.00, for mailing the postcard because the defendants' conduct, providing late discovery, created the need to move the trial date. Specifically, the defendants produced 3,000 pages of documents less than three weeks before the trial date. **See [Filing No. 281](#)** - Reply at 2. The plaintiffs do not contend the defendants engaged in bad faith, but do contend the defendants nevertheless caused the delay of trial, requiring the additional notices with attendant costs.

The defendants argue no discovery sanction should be imposed in this case because the defendants acted reasonably when they discovered, then produced the documents at issue. Further the defendants contend the general rule in class action cases

is to require the plaintiffs to bear the cost of suit unless the defendants are found liable on the plaintiffs' claims. The defendants assert it is unreasonable to shift the burden at this stage of the case.

The court finds that since the defendants' conduct necessitated moving the trial date, the defendants shall bear the costs associated with informing the class members of the new trial date. This cost has nothing to do with whether the defendants are ultimately found liable to the plaintiffs on their underlying claims. The cost is reasonable under the circumstances despite the defendants' level of culpability for causing the delay of trial. Upon consideration,

**IT IS ORDERED:**

The plaintiffs' Unopposed Motion Regarding Postcard Notice to the Class Regarding the Trial Date; Opposed Motion that Cost of Mailing the Postcard Notice be Paid by Defendant ([Filing No. 278](#)) is granted.

Dated this 7th day of March, 2009.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge